

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

In re:	)	
LION RAISINS, INC., a California	)	<b>I&amp;G Docket No. 01-0001</b>
corporation formerly known as LION	)	
ENTERPRISES, INC., and as LION RAISINS;	)	<b>Decision and Order</b>
LION RAISIN COMPANY, a partnership or	)	
unincorporated association; LION PACKING	)	
COMPANY, a partnership or unincorporated	)	
association; AL LION, JR., an individual;	)	
DAN LION, an individual; JEFF LION,	)	
an individual; and BRUCE LION, an individual,	)	
	)	
Respondents	)	

AND

In re:	)	
Bruce Lion, an individual;	)	<b>I&amp;G Docket No. 03-0001</b>
Alfred Lion, Jr., an individual;	)	
Daniel Lion, an individual;	)	<b>Decision and Order</b>
Jeffrey Lion, an individual;	)	
Larry Lion, an individual;	)	
Isabel Lion, an individual;	)	
Lion Raisins, Inc., a California corporation;	)	
Lion Raisin Company, a partnership or	)	
unincorporated association; and	)	
Lion Packing Company, a partnership or	)	
unincorporated association,	)	
	)	
Respondents	)	

**Decision Summary**

1. To protect the integrity of USDA inspection, analysis, and reporting of raisin quality, considering the unauthorized and unlawful alteration or fabrication of official USDA inspection certificates that occurred in the shipping department of Lion Raisins, Inc., in

Fresno or Selma, California, in 1997-98, I decide the length of debarment (being banned from receiving USDA inspection and grading services), if any, that is necessary, appropriate and proportionate, as to each Respondent. I decide that, for Bruce Lion, who managed the shipping department, debarment not to exceed 36 months is necessary, appropriate and proportionate. Bruce Lion was responsible for what the shipping department did (or failed to do), and the shipping department's actions (or failures to act) cause each of the three respondent companies (1) Lion Raisins, Inc., a California corporation formerly known as Lion Enterprises, Inc., and Lion Raisins; (2) Lion Raisin Company, a partnership or unincorporated association; and (3) Lion Packing Company, a partnership or unincorporated association; to be subjected, likewise, to debarment not to exceed 36 months. Dan Lion, also known as Daniel Lion, managed production and the packing department and did not know of the shipping department's unauthorized and unlawful alteration or fabrication of official USDA inspection certificates, but I nevertheless decide that, for Dan Lion, debarment not to exceed three months is necessary, appropriate and proportionate, based on the contribution of the packing department to product being out-of-customer-specifications. For the four remaining Respondents, each an individual, I decide that no debarment is necessary, appropriate or warranted: (1) Al Lion, Jr., also known as Alfred Lion, Jr.; (2) Jeff Lion, also known as Jeffrey Lion; (3) Larry Lion; and (4) Isabel Lion; each of whom could not have known, nor should any of them have known, of the unauthorized and unlawful alteration or fabrication of official USDA inspection certificates that occurred in the shipping department. 7 U.S.C. § 1621 *et seq.*, 7 C.F.R. § 52 *et seq.*

## Introduction

2. Lion's shipping department, on occasion, provided an inspection certificate to a customer, to apprise the customer of the condition and quality of a shipment of raisins. Lion's shipping department was managed by Bruce Lion during the time material herein, including about March 14, 1997 through about April 27, 1998 ("01" case, referring to I&G Docket No. 01-0001) including August 26, 1997 ("03" case, referring to I&G Docket No. 03-0001). What Lion provided to its customer did not, at times, match the USDA inspection certificate copy in USDA's files. Lion asserts that the fault lay with USDA's record-keeping failures. Evidence to the contrary comes from two sources: documentation surrounding inspection certificate issuance, found in Lion's own files as well as USDA's files; and the experience of Lion office workers, who testified, who were responsible for creating inspection certificates that never were issued by USDA. What Lion Raisins FAXed to its customer was not what USDA records showed that USDA had issued. The sinister explanation: In order to convey to Lion's customer that the customer got what it ordered, Lion personnel in the shipping department routinely forged, altered, or otherwise falsified the official USDA results. The innocent explanation: USDA did determine the condition of the raisins to be as stated on the certificate that was FAXed to Lion's customer, but USDA's record-keeping did not keep up with events on the ground. Further, the certificate that was FAXed to Lion's customer conveyed the true condition of the raisins.
3. There are **seven (7)** inspection certificates at issue, delivered to Lion customers, six (6) in the "01" case; one (1) in the "03" case. Of the seven certificates delivered to Lion customers, one certificate has a discrepancy between the USDA official grade, based on

USDA records, and the grade shown to the Lion customer AS IF it were the USDA official grade. The remaining six certificates have discrepancies between the USDA official moisture content, based on USDA records, and the moisture content shown to the Lion customer AS IF it were the USDA official moisture content.

### **Parties and Counsel**

4. The Complainant is the Administrator of the Agricultural Marketing Service, United States Department of Agriculture (frequently herein “AMS” or the “Complainant”).

5. AMS is represented by Colleen A. Carroll, Esq., with the Office of the General Counsel (Marketing Division), United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington D.C. 20250-1417.

6. By “Lion,” I refer to all Respondents, collectively. The Respondents are Bruce Lion, who was an important salesman, the manager of the shipping department, and the corporate Vice President; the three respondent companies (1) Lion Raisins, Inc., a California corporation formerly known as Lion Enterprises, Inc., and Lion Raisins; (2) Lion Raisin Company, a partnership or unincorporated association; and (3) Lion Packing Company, a partnership or unincorporated association; Dan Lion, also known as Daniel Lion, who was the manager of the packing department (“processing”) (Dan was given an operating title of “Vice President” to acknowledge his importance, but Dan was not truly a corporate officer); Al Lion, Jr., also known as Alfred Lion, Jr., who was Chief Executive Officer and Chief Financial Officer, handled the check book, was the corporate President, a corporate Director, a corporate shareholder, and the corporate registered agent; Jeff Lion, also known as Jeffrey Lion, who was the manager of the farm operations (“growing” and “growers”) (Jeff also was

given an operating title of “Vice President” to acknowledge his importance, but Jeff was not truly a corporate officer); Larry Lion, who was corporate Secretary-Treasurer, a corporate Director, and a corporate shareholder; and Isabel Lion, who was a corporate Director, and a corporate shareholder.

7. The Respondents are represented by James A. Moody, Esq., Suite 300, 1101 30th St. N.W., Washington, D.C. 20007; and Wesley T. Green, JD MBA, Corporate Counsel for Lion Raisins, Inc., 9500 S. DeWolf Avenue, P.O. Box 1350, Selma, CA 93662. Bruce Lion was also represented by Daniel A. Bacon, Esq.

#### **Procedural History**

8. Violations are alleged of the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. § 1621 *et seq.*, and the regulations, 7 C.F.R. Part 52, in both the Second Amended Complaint filed on July 2, 2002 in the “01” case, and the Amended Complaint filed on July 12, 2005 in the “03” case. Respondents’ Answer was filed July 29, 2002. Ironically, it was Brian Leighton, former attorney for Lion, who then asked that any other amendments be filed in a new case. That’s what gave rise to the “03” case. The “03” case has a dramatic history. The “03” case was decided in AMS's favor by default, but the U.S. District Court put a stop to that. Then the “03” case was decided in Lion's favor by dismissal based on the statute of limitations, but the Judicial Officer has put a stop to that.

9. The hearing in the “01” case took 72 days; the hearing in the “03” case began on June 9 and 10, 2008 and was not concluded. The transcript is referred to as “Tr.” All of the proposed transcript corrections are accepted, and the transcript is ordered corrected accordingly.

10. Respondents' oral motion for consolidation is hereby granted; I hereby consolidate for decision the two cases (the "01" case and the "03" case); receive into evidence in the "03" case all the evidence admitted in the "01" case; and receive into evidence in the "03" case, over objection, the exhibits delivered to me on June 9, 2008: Complainant's exhibits CX 1 through CX 4; and CX 6 through CX 12; and the three volumes of Respondents' exhibits, RX 1 through RX 148.

11. All motions to reopen the evidence in the "01" case are denied, and no additional evidence will be received in either case, the "01" case or the "03" case. On careful review of the record before me, I find sufficient evidence to render a decision; additional proceedings will do nothing more than waste resources, mine, AMS's and Lion's. More proceedings will not provide new insight into Lion's business operations or AMS's inspection and grading operations and will not alter my views on the outcome of these proceedings.

12. All motions to certify questions to the Judicial Officer are denied.

13. On the statute of limitations issue in the "03" case, I adopt in its entirety the reasoning on that issue of the Judicial Officer in his Decision and Order issued April 17, 2009 in *In re Lion Raisins, Inc.*, I&G Docket No. 04-0001 (the "04" case), except that I do not dismiss any of the "03" case. *See* pp. 87-91.

14. AMS's Motion to Rescind Order Assigning Mediator is denied.

15. All other pending motions are denied, to the extent that they are not addressed in this Decision and Order.

### **Findings of Fact and Conclusions**

16. Paragraphs 17 through 35 contain intertwined Findings of Fact and Conclusions.

17. The Secretary of Agriculture has jurisdiction over each Respondent and the subject matter involved herein.
18. No penalties are imposed by this Decision & Order. No civil penalties are authorized by Statute. 7 U.S.C. § 1621 *et seq.* The Statute authorizes criminal penalties, but no criminal case was filed, and this is a civil case.
19. Regarding the inspection certificates addressed in this Decision, seven of them, from 1997-98, which were provided to Lion customers by Lion's shipping department, the evidence shows that Lion's shipping department took impermissible short cuts, conforming inspection certificates to customers' specifications without taking the required steps designed to re-determine the actual quality and condition of the raisins.
20. What is really alarming is that, in 1997-98, Lion shipping clerks routinely fabricated or altered official USDA inspection certificates when the inspector's worksheet (the worksheet was used to communicate the findings that go on the inspection certificate), reflected something other than the customer's specifications. Lion shipping clerks even forged inspectors' names, and even used "white-out" to change the grade (the "white-out" and alteration are quite noticeable on the original but would not be noticeable on a FAXed photocopy). The testimony of Dorothy Proffitt Hamilton (CX 31a, 31b, Tr. 495-96) and the testimony of Ken Turner (CX 36, 36a, Tr. 1552-53, 1559-1563) persuade me that this is true, that they both had done it, too, routinely enough that they did not even remember the occasion of their first forgery, and that Bruce Lion was aware it was being done.
21. By altering or fabricating official USDA inspection certificates, Lion's shipping department thereby attributed to USDA unfounded statements of quality and condition. Thus,

since USDA had not made the findings, creating an inspection certificate that said USDA had, was a misrepresentation, or deceptive or fraudulent practice or act. That may be deemed sufficient cause for debarment. 7 C.F.R. § 54.

22. Even when the altered or fabricated inspection certificate was more accurate as to the quality and condition of the raisins, creating it was still a misrepresentation, or deceptive or fraudulent practice or act, because its findings are falsely attributed to USDA.

23. Lion worked hard to deliver to its customers what its customers requested; which is one reason why Lion had sold and continued to sell a huge quantity of its California raisins all over the world. There is no evidence of what the moisture content was, of the raisins delivered to Lion's customers, or how that compared to the raisins' moisture content shown on the inspection certificates addressed in this Decision. Bruce Lion testified that if a certificate did not match customer specifications, Lion's salesman would get upset, point a finger at the shipping department employee, who would point finger at USDA, "and so it created quite a commotion." Tr 13,368. What DID customers complain about? Not that raisins were too wet, testified Bruce Lion. Tr 13,367. Sometimes that they were too hard (too dry). Stems, capstems, stickiness. Tr 13,367. Free-flowingness (related to damage more than to moisture).

24. Lion was aware that measuring raisin moisture content is not an exact science. There is of course variability from raisin to raisin: 12 pounds of raisins taken as a sample during an hour, when 40,000 pounds of raisins passed through the stemmer, may vary from a different 12 pounds taken as a sample. Tr. 12,808-10. Even using the same sample can yield a different moisture content reading, depending on the method of taking the reading. Lion was



aware that many of its shipments would lose moisture during shipping. Lion was aware that many of its customers used different equipment to measure moisture than that used by the inspectors at Lion's plant. If Lion needed to communicate all such factors to its customers, to assure them they were getting what they requested, despite a USDA inspection certificate that said something else, a cover letter, or a phone call, could have been the remedy. To choose unauthorized and unlawful alteration or fabrication of official USDA inspection certificates, was an arrogant and stupid choice.

25. AMS has good cause to be outraged by the unauthorized and unlawful alteration of official USDA inspection certificates that I find happened in 1997-98. Lion showed disrespect to AMS's authority over raisin inspection and grading. Of the individual respondents, only Bruce Lion could have known of the unauthorized and unlawful acts. Not even the USDA inspection and grading personnel on Lion's premises knew (all of whom worked for USDA, some as USDA employees and some as "contractors"), and they had control mechanisms in place to prevent just such happenings, accountability mechanisms. No, were it not for the anonymous tip, and the subsequent investigative work by Ms. Martinez-Esquerria and Mr. David W. Trykowski, no one but shipping department workers would have known. Therefore debarment makes no sense for the individuals who did not know and could not reasonably have been expected to know of the unauthorized and unlawful acts: Al Lion, Jr., Jeff Lion, Larry Lion, and Isabel Lion.

26. AMS sought 36 years debarment for each Respondent, for the six inspection certificates (described in 18 alleged violations) in the "01" case. AMS Br. at 105, 180.

27. A primary value of debarment is deterrence, not only at Lion, but also where others use inspection and grading services. Deterrence is a benefit in remedial actions, such as this, as well as in punitive actions. I conclude that, for all the wrongdoing, not only in the “01” case and the “03” case, but the “04” violations included, a 36-month debarment, maximum, suffices as deterrent. For that reason I conclude that the 36-month debarment, maximum, should be a **concurrent** remedy.

28. What this Decision and Order imposes, as to all but four of the Respondents, is the temporary loss of privileges. Being debarred triggers the loss of inspection and grading privileges. The impact extends not only to those who lose privileges but also to onlookers who are warned. The deterrent effect of remedies is valuable, just as the deterrent effect of punishments is valuable. [The classic example of a remedy having a deterrent effect is the driver losing his privilege to drive.]

29. I now take into consideration Lion’s many reasons why no debarment is necessary: all the changes during the past 11 years that make it impossible for the wrongdoing to happen again. Assuming all Lion’s reasons are true and valid, I still choose a 36-month debarment, maximum, for the deterrent effect.

30. I now take into account all the frustration that Lion had in 1997-98 with the inadequacies of USDA’s inspection and grading. Lion was frustrated with the lack of precision by USDA inspectors. Bruce Lion testified that AMS never put enough inspectors on the job to keep up. Lion was frustrated that incoming raisins that should have been failed were passed; making it more difficult to have them meet specifications after processing (Lion bought from others and paid accordingly; Lion could have reconditioned failing raisins for a

better end result; Lion could have chosen better which raisins to match with which orders (paste was one option). Lion points to the great number of 18% moistures in a row, proving to Lion that USDA was not getting the job done. Lion was frustrated that USDA did not time the moisture measurement, contending that the moisture results vary, depending on how much time elapses. (The inspectors were busy doing other things while getting the moisture readings, and the time was variable.) Bruce Lion testified that oil treatment “would probably make the reading be 1.5 to 2 percent higher than it really was.” Tr. 13,334. The moisture measuring machines that USDA used were not the same as what Lion Raisins Quality Control used and not the same as used by some of Lion Raisins’ European customers. There was even the difficulty of desired results for some Lion customers being partially thwarted by the maximum allowable moistures of 18%, where some customers wanted more moisture than that. Agreeing that all these concerns are important, they do not justify the unauthorized and unlawful alteration or fabrication of official USDA inspection certificates, and I still choose a 36-month debarment, maximum, for the deterrent effect.

31. I now consider that Lion has been at a tremendous disadvantage throughout this litigation. Lion’s original shipping files were seized by the U.S. Government for a criminal investigation. Lion’s attempts to get copies of what had been seized were frustrated and not fully successful. Even when Lion got copies, copies do not always suffice to evaluate alleged alterations or forgeries. Lion’s handwriting expert did not have originals to work from. Some paperwork had been destroyed that showed the disposition of product that was “set out” - - Lion refers to the missing documentation as the “red tag ledger log.” The destroyed documentation might have been valuable when inspectors may not have noted everything on

the line check sheets with respect to product that was “set out”. Lion’s FOIA (Freedom of Information Act) requests were thwarted in many ways. I regretted USDA detaching the worksheets from certificates before supplying copies of the certificates. I, too, wanted to see the worksheets. Lion was unable to persuade me of its theory: that the seven certificates that do not match the official USDA data are the result of USDA failing to follow its own procedures, taking short cuts of its own; that USDA inspectors made changes but failed to document them properly. I take all these disadvantages to Lion into account and believe still that Lion got a fair trial, and that the most believable explanation for the discrepancies is that USDA official inspection certificates were at times changed by Lion office workers (“shipping clerks”) to reflect the customer’s specifications without regard for the actual condition of the raisins, which could have been determined with extra effort. Methods were in place to coordinate review of the raisins’ condition with USDA, but at times no methods for review were employed. Rather, an unauthorized inspection certificate that purported to show USDA results was created by Lion office workers, without regard for the truth or falsity of its representations.

32. I have taken into account that Ken Turner used pencil, like Bruce Lion, and that some of the instructions for which Bruce Lion is blamed, may have been authored by Ken Turner. Maralee Berling’s testimony, looking at handwriting, was especially persuasive to me in this regard. Bruce Lion also identified one of Ken Turner’s instructions that could have been mistaken for Bruce Lion’s. Bruce Lion supervised Ken Turner, as Bruce Lion also supervised the others in the shipping department. Whether the unauthorized alterations and fabrications were done in direct response to Bruce Lion or not, Bruce Lion was aware they were

happening. I conclude that all seven certificates at issue here are the responsibility of a Lion employee who worked in the shipping department, either Bruce Lion or someone under his direction or supervision.

33. Regarding the credibility of witnesses, to the extent that Bruce Lion did not acknowledge knowing that unauthorized alterations and fabrications of USDA official inspection certificates were being done in 1997-98 in Lion's shipping department, I conclude that he did know. Especially valuable witnesses were Maralee Berling, Dorothy Hamilton (formerly Proffitt), and David Trykowski, each of whom had an impressive command of facts important during March 14, 1997 through April 27, 1998, and each of whom was totally credible.

34. Each of the **seven (7)** inspection certificates at issue, delivered to Lion customers, six (6) in the "01" case; one (1) in the "03" case, is an example of a violation of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. § 1621, *et seq.*), and 7 C.F.R. § 54. In each of these seven instances, the preponderance of the evidence shows that alteration or fabrication was not authorized by USDA; consequently delivering the altered or fabricated certificate to a customer constitutes falsification of a USDA certificate (whether the falsified certificate was accurate or not).

A. Violation(s) on or about March 14, 1997: Lion's shipping department altered a valid USDA Certificate which showed the U.S. Grade to be "C" and then provided the altered Certificate to a raisin customer in Denmark showing the U.S. Grade to be "B". Paragraphs 8 and 15 of the Second Amended Complaint.

B. Violation(s) on or about April 22, 1998: Lion's shipping department fabricated a Certificate and provided it to a raisin customer in Macau, showing moisture content to be 16.0% when the valid USDA Certificate had shown the moisture content to be 16.0% to 16.4%. Lion's shipping department placed a non-authorized signature (forged) of a USDA inspector on the fabricated Certificate. Paragraphs 9, 10, and 15 of the Second Amended Complaint.

C. Violation(s) on or about December 18, 1997: Lion's shipping department fabricated a Certificate and provided it to a raisin customer in France, showing moisture content to be 15.9% when the valid USDA Certificate had shown the moisture content to be 16.0% to 17.8%. Lion's shipping department placed a non-authorized signature (forged) of a USDA inspector on the fabricated Certificate. Paragraphs 11, 12, and 15 of the Second Amended Complaint.

D. Violation(s) on or about March 18, 1998: Lion's shipping department utilized a form it had created (that mimics - - impersonates - - a USDA Certificate except that it's on Lion Raisins letterhead) and provided it to a raisin customer in France, showing the moisture to be 15% when the valid USDA results had shown the moisture to be 16.0% to 16.6%. This "facsimile" Certificate (unauthorized and misleading, in that it appears to report results determined by a USDA inspector) simulates a USDA Certificate. Paragraphs 13 and 16 of the Second Amended Complaint.

E. Violation(s) on or about April 27, 1998: Lion's shipping department utilized a form it created (that mimics - - impersonates - - a USDA Certificate except that it's on Lion Raisins letterhead) and provided it to a raisin customer in France, showing the moisture to be 15%

when the valid USDA results had shown the moisture to be 14.8% to 16.8%. This “facsimile” Certificate (unauthorized and misleading, in that it appears to report results determined by a USDA inspector) simulates a USDA Certificate. Paragraphs 14 and 16 of the Second Amended Complaint.

F. Violation(s) on or about December 18, 1997: Lion’s shipping department fabricated a Certificate and provided it to a raisin customer in Austria, showing moisture content to be 17% when the valid USDA Certificate had shown the moisture content to be 18%. Lion Raisins placed a non-authorized signature (forged) of a USDA inspector on the fabricated Certificate. Paragraphs 15, 17 and 18 of the Second Amended Complaint.

G. Violations on or about August 26, 1997: Lion’s shipping department altered a Certificate and provided it to a raisin customer in Macau, showing the moisture content to be 16% when the valid USDA Certificate had shown the moisture content to be 18%. Paragraphs 11, 12 and 13 of the Amended Complaint. “03” case.

35. Only Bruce Lion, the three Lion companies, and Dan Lion shall be denied inspection services (debarred), for any time, under 7 C.F.R. § 52.54; the four remaining individual respondents should not, as they had no culpability in these violations and could not have known they were occurring. The periods of debarment shown in the following Order are necessary, appropriate, and proportionate, and shall run **concurrently** (in the “01” case and the “03” case and the “04” case).

### Order

36. The debarments specified in this Order shall be effective (shall begin) on the tenth day after this Decision & Order becomes final.<sup>1</sup>

37. For a period not to exceed thirty-six months Respondent Bruce Lion, an individual, is debarred within the meaning of 7 C.F.R. § 52.54. This debarment is for actions (or failures to act) in I&G Docket No. 01-0001 and I&G Docket No. 03-0001 and shall run concurrently with any debarment in I&G Docket No. 04-0001.

38. For a period not to exceed thirty-six months Respondent Lion Raisins, Inc., a California corporation formerly known as Lion Enterprises, Inc., and Lion Raisins, is debarred within the meaning of 7 C.F.R. § 52.54. This debarment is for actions (or failures to act) in I&G Docket No. 01-0001 and I&G Docket No. 03-0001 and shall run concurrently with any debarment in I&G Docket No. 04-0001.

39. For a period not to exceed thirty-six months Respondent Lion Raisin Company, a partnership or unincorporated association, is debarred within the meaning of 7 C.F.R. § 52.54. This debarment is for actions (or failures to act) in I&G Docket No. 01-0001 and I&G Docket No. 03-0001 and shall run concurrently with any debarment in I&G Docket No. 04-0001.

40. For a period not to exceed thirty-six months Respondent Lion Packing Company, a partnership or unincorporated association, is debarred within the meaning of 7 C.F.R. § 52.54.

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<sup>1</sup> See paragraph 46.



This debarment is for actions (or failures to act) in I&G Docket No. 01-0001 and I&G Docket No. 03-0001 and shall run concurrently with any debarment in I&G Docket No. 04-0001.

41. For a period not to exceed three months Respondent Dan Lion, an individual, is debarred within the meaning of 7 C.F.R. § 52.54. This debarment is for actions (or failures to act) in I&G Docket No. 01-0001 and I&G Docket No. 03-0001 and shall run concurrently with any debarment in I&G Docket No. 04-0001.

42. Respondent Al Lion, Jr., an individual, shall not be debarred within the meaning of 7 C.F.R. § 52.54. He did not know and could not have known what the Lion shipping department was doing in 1997-98.

43. Respondent Jeff Lion, an individual, shall not be debarred within the meaning of 7 C.F.R. § 52.54. He did not know and could not have known what the Lion shipping department was doing in 1997-98.

44. Respondent Larry Lion, an individual, shall not be debarred within the meaning of 7 C.F.R. § 52.54. He did not know and could not have known what the Lion shipping department was doing in 1997-98.

45. Respondent Isabel Lion, an individual, shall not be debarred within the meaning of 7 C.F.R. § 52.54. She did not know and could not have known what the Lion shipping department was doing in 1997-98.

#### **Finality**

46. This Decision & Order shall be final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice. 7 C.F.R. § 1.145.

Copies of this Decision and Order (as to both I&G 01-0001 and I&G 03-0001) shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.  
this 4<sup>th</sup> day of May 2009

Jill S. Clifton  
Administrative Law Judge

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